



Australian Government
Department of Finance



Department of Finance

Submission to the
Joint Standing Committee on Electoral Matters
Electoral Legislation Amendment (Miscellaneous Measures) Bill 2020

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Submission on the Electoral Legislation Amendment (Miscellaneous Measures) Bill 2020

The Department of Finance welcomes the opportunity to provide a submission to the Joint Standing Committee on Electoral Matters' (the Committee) inquiry into the Electoral Legislation Amendment (Miscellaneous Measures) Bill 2020 (the Bill) which amends the *Commonwealth Electoral Act 1918* (the Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act).

The amendments contained in the Bill clarify the relationship between Commonwealth and State electoral funding and disclosure laws, modernise electoral processes and Australian Electoral Commission (AEC) operations to facilitate efficient and timely service delivery, and make technical amendments to remedy anomalies and improve clarity in the legislation.

Specifically, the Bill amends the Electoral Act to:

- clarify the relationship between federal and state and territory electoral donation and disclosure laws following the High Court decision in *Spence v Queensland* [2019] HCA 15. These amendments narrow the operation of provisions that were passed in the last Parliament, to reflect the High Court's decision;
- make technical amendments to address anomalies in entity registration and public election funding rules;
- improve electoral processes, electoral administration, vote issuing procedures and improve workforce flexibility for the Australian Electoral Commission; and
- expand electronically assisted voting methods, which are currently only available to sight impaired persons, to Antarctic electors (Australians working in Antarctica). This replaces the special arrangements for Antarctic electors in the Electoral and Referendum Acts.

Where relevant, these changes are mirrored in the Referendum Act, to maintain consistency between the Electoral and Referendum Acts.

There are two Schedules in the Bill: Schedule 1 introduces amendments in respect of public election funding and gifts, and voting and scrutiny processes; and Schedule 2 makes amendments relating to a Redistribution Committee for the Australian Capital Territory.

Schedule 1, Part 1 – amendments relating to public election funding and gifts

The *Electoral Legislation Amendment (Funding and Disclosure Reform) Act 2018* (Funding and Disclosure Act) amended the Electoral Act and inserted section 302CA. On 17 April 2019, the High Court in *Spence v State of Queensland* found section 302CA of the Electoral Act was invalid. In light of this decision, the Bill amends the Electoral Act to clarify the relationship between federal, state and territory electoral funding and disclosure laws (sections 302CA and 314B).

The replacement rules for giving, offering or seeking a gift are all connected to a new fundamental concept of whether a donation had an 'express' federal purpose. Expression of purpose can be communicated by various means including an event invitation, a donation form, correspondence, receipts, and electronic messages. The new rules also recognise that assignment of funds to a federal purpose can be expressed at different points in the donation process, including from the point of seeking donations, offering donations, giving donations, receiving them, keeping (banking), or at the point of use.

This approach seeks to improve certainty for all entities and individuals who participate in electoral events across different levels of Government, and who are subject to different electoral funding and disclosure laws across federal, state and territory jurisdictions.

The revised provisions are narrower than the previous law, and provide that federal electoral law only applies exclusively to donations as follows:

- In the case of a donation being offered, sought or given; where this is done expressly for federal purposes; and
- In the case of a donation being received or kept; where this gift is subsequently used for a federal purpose.

This approach respects the application of state and territory laws to donations used for state or territory purposes. The new provisions do not purport to apply federal law exclusively to amounts that are 'unconditional', namely donations that are not expressly pledged to either a federal or state purpose. In such cases, both state and federal law may apply depending on the facts.

The revised rules also ensure that recipients of donations will only be covered exclusively by the federal law if the gift is managed and used consistently with a federal purpose. For example, if a gift to a political party is given for federal purposes but is subsequently used in an inconsistent way for a non-federal purpose – for instance in an election regulated by state or territory law – then exclusive coverage of the federal law is taken to have never applied to the recipient. This would mean that a political party may need to disclose the amount under state law and may be liable for penalties if the donation was not permitted under state law.

Party A is running candidates in a federal election and receives \$20,000 in donation receipts from various small, individual donations. Party A also receives a \$50,000 donation from a property developer specifically to support the federal election campaign. Party A spends \$40,000 on the federal election campaign. Party A subsequently spends the remaining \$30,000 on a specific state campaign issue.

In this example, Party A would, in the first instance, need to disclose the donation from the property developer under federal law. The property developer would also be required to disclose under federal law. Such disclosure, as is currently, would ensure the donation is in the public domain. As Party A has subsequently used some of the property developer donation for a state purpose, Party A is also subject to the funding and disclosure requirements of that jurisdiction, including any penalties that may apply.

The Bill also clarifies changes made through the Funding and Disclosure Act. These changes simplify and clarify funding and entitlement rules including the rounding and indexation of public funding entitlements for eligible candidates, parties and groups. It makes clear, for avoidance of doubt, that public funding for joint Senate tickets is split in proportions decided by the relevant parties and the Bill allows amendments of public funding applications, including permitting applicants to clarify or add information to justify their claim. It also fixes an unintended contradiction between rules related to the de-registration and registration of political campaigners and associated entities.

Schedule 1, Part 2 – amendments to voting and scrutiny processes

The Bill modernises aspects of the Electoral Act to respond to evolving challenges and to ensure the continued integrity of the Australian electoral system. Where relevant, these amendments to the Electoral Act are mirrored in the Referendum Act.

These amendments support improvement in the conduct of federal elections and referendums. Although the individual technical changes are modest, together they will help the AEC to run a more efficient and responsive service for the public. The measures will enable the AEC to better align work practices with the contemporary behaviour and expectations of voters and position the AEC to facilitate more efficient and timely service delivery.

The Bill allows greater workforce flexibility for the AEC and more nationally consistent processes. For instance, it allows the Electoral Commissioner to devolve functions of a Divisional Returning Officer (DRO) to other AEC officials. This will enable the AEC to manage its resources more effectively to ensure effective service delivery.

The Bill reduces some unnecessarily prescriptive administrative practices, such as:

- allowing the AEC to use the most effective postal services and permitting flexibility to supply more cost effective and reliable implements, such as pens rather than pencils, to mark ballot papers in polling places;
- allowing variation in the order of the three questions, but not the questions themselves, that must be asked of voters to ascertain their entitlement to vote;
- removing the obligation for all Divisional Offices to be pre-poll voting centres, as many are not suitable for this purpose, including due to poor public access;
- permitting party and candidate names to be printed under a preference box on a Senate ballot instead of alongside it, to make the ballot paper clearer and easier for voters to handle; and
- extending telephone voting to eligible Australian voters living in Antarctica, to improve the secrecy of votes for Antarctica voters and streamline operational process.

Schedule 2 – amendments relating to a Redistribution Committee for the Australian Capital Territory

The Bill makes minor changes to the composition of the Redistribution Committee for the Australian Capital Territory (ACT) to allow a senior AEC staff member to be on the committee, rather than a Divisional Returning Officer (DRO). This will alleviate some additional workload burden on DROs, especially if a redistribution coincides with an electoral event. It will also ensure ACT Redistribution Committee members have seniority and experience consistent with members of corresponding Redistribution Committees for other states and the Northern Territory.